New Jersey State Legislature
Office of Legislative Services
Office of the State Auditor

Department of the Treasury
Division of Purchase and Property
Professional Services Contracts

July 1, 2005 to August 31, 2007

Richard L. Fair
State Auditor
The Honorable Jon S. Corzine  
Governor of New Jersey

The Honorable Richard J. Codey  
President of the Senate

The Honorable Joseph J. Roberts, Jr.  
Speaker of the General Assembly

Mr. Albert Porroni  
Executive Director  
Office of Legislative Services

Enclosed is our report on the audit of the Department of the Treasury, Division of Purchase and Property, Professional Services Contracts for the period of July 1, 2005 to August 31, 2007. If you would like a personal briefing, please call me at (609) 292-3700.

Richard L. Fair  
State Auditor  
November 28, 2007
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Department of the Treasury  
Division of Purchase and Property  
Professional Services Contracts

**Scope**

We have completed an audit of the Department of the Treasury, Division of Purchase and Property, Professional Services Contracts for the period July 1, 2005 to August 31, 2007. Our scope did not include construction related services normally contracted by the Division of Property Management and Construction or the Department of Transportation. Expenditures in accounts used for professional services were $800 million a year for the period under review.

The prime responsibility of the Division of Purchase and Property is to administer a centralized statewide purchasing system, including the setting of purchasing standards and specifications. Professional services are private sector skills acquired by the state for a fee under contract or agreement that defines an end product or service to be delivered. Professional services also refer to consulting advisory services, which typically result in an analysis and recommendation for operating improvement.

**Objectives**

The objectives of our audit were to determine whether the financial transactions were related to the programs, were reasonable, and were recorded properly in the accounting systems. We also determined compliance with laws and regulations and the effectiveness of the contracting process.

This audit was conducted pursuant to the State Auditor's responsibilities as set forth in Article VII, Section 1, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

**Methodology**

Our audit was conducted in accordance with Government Auditing Standards, issued by the Comptroller General of the United States.
In preparation for our testing, we studied legislation, administrative code, and circular letters promulgated by the Department of the Treasury. Provisions that we considered significant were documented and compliance with those requirements was verified by interview, observation, and through our samples of expenditure transactions. We also read the budget message, reviewed financial trends, and interviewed agency personnel to obtain an understanding of the programs and the internal controls.

A nonstatistical sampling approach was used. Our samples of financial transactions were designed to provide conclusions about the validity of transactions as well as internal control and compliance attributes. Sample populations were sorted and transactions were judgmentally selected for testing.

**Conclusions**

We found that the financial transactions included in our testing were related to the programs, were reasonable, and were recorded properly in the accounting systems. We also found general compliance with laws and regulations and an overall effective contracting process. In making these determinations, we noted certain internal control weaknesses and matters of compliance with laws and regulations that merit management's attention.
Training of State Contract Managers

Pursuant to N.J.S.A. 52:34-10.7 any state agency entering into a contract is required to designate an employee who shall be responsible for the overall management and administration of the contract. Treasury Circular Letter 07-03-DPP outlines the duties and responsibilities of a State Contract Manager such as ensuring bills are accurate and contract requirements have been satisfied by the vendor. The circular letter also states “State Contract Managers for agency-specific contracts exceeding a total contract amount of $1 million shall have undergone using agency-funded formal project management training prior to assuming the position”. It further requires the Division of Purchase and Property (DPP) to provide agencies with a list of acceptable training programs or to request the Department of Personnel to establish a training program.

Our interview of the contract managers for the 16 contracts in our sample exceeding $1 million found that none of them received agency-funded training in project management. More than half of those interviewed were not aware of the circular letter. Without receiving appropriate training, contract managers might have difficulty meeting the responsibilities outlined in the circular letter, which could lead to inefficiencies and ineffectiveness. This also increases the risk the state will pay for services not rendered and will pay for deliverables not met.

Recommendation

We recommend DPP work with the Department of Personnel to develop a project management training program covering the responsibilities of Circular Letter 07-03-DPP or provide agencies with a list of acceptable training programs.
Requests for Waivers of Advertising

The Division of Purchase and Property (DPP) may grant state agencies an exemption from procuring goods and services through the advertised bidding process. Agencies must ask for these exemptions by submitting a Request for Waiver of Advertising document. The waiver process is used by agencies because of the technical nature of the services to be performed. It is also used by agencies wanting to utilize a sole source vendor or to retain services quickly in matters of public exigency. Although we noted the waiver process was generally followed and proper approvals were obtained, we noted a pattern where agencies limited competition on smaller contracts and subsequently extended the business relationship to larger contracts. Specific examples follow.

- A state agency used a waiver to obtain the consulting services of a former employee for $175,000 in 2004. Although competition was sought for the original procurement, this consultant was subsequently considered a sole source vendor by the agency and was given additional contracts through waivers totaling $467,000 over the next three years.

- A state agency was granted a waiver for $2 million to hire experts to testify at hearings and to assist in developing policy proposals and draft legislation. The agency improperly used this waiver to hire other individuals, including former employees, to perform general office functions at a cost of $272,000.

- A state department used the waiver process, with limited competition, to hire a consultant for $146,800 to perform a risk assessment. At the completion of the
work, the same consultant was hired through the waiver process for $1.6 million to expand the services.

- A state department initially used the waiver process, with limited competition, to hire a consultant in fiscal year 2004 for $100,000 to assist in developing policies and procedures. The department then considered them a sole source vendor and rehired them to perform other services totaling $692,000 during the next three years.

When agencies limit competition there is a greater risk of the state not obtaining the best possible price and terms for the service. Also, the hiring of former employees with limited competition creates an appearance of impropriety or a related party transaction, especially when these relationships are extended.

We also noted four instances, from the 18 waivers tested, where agencies procured services and allowed the work to begin prior to seeking DPP approval to use the waiver process. Treasury Circular Letter 00-02-DPP provides guidelines for utilizing the waiver process and for commencing with verbal approval from DPP only when the public’s health and safety are at risk or there is a matter of public exigency. None of these instances involved situations where the public’s health and safety were at risk or that were a matter of public exigency. Although DPP recognized these instances, they have limited recourse against the violating agencies.

**Recommendation**

We recommend DPP revise existing policies which would require agencies to re-bid subsequent professional service contracts where competition was originally sought. We also recommend DPP seek legislation that would provide a consequence for those responsible for allowing a vendor to commence work prior to DPP approval.
Contract language should be more transparent.

Monitoring of Scope and Deliverables

Professional services contracts were sometimes vague regarding the scope of work, the product to be delivered by the vendor, or the payment terms. In 20 of our 26 sample contracts the deliverables and payment terms were clearly defined and there was tangible evidence of a finished product. The six remaining contracts’ scope of work contained terminology such as “coordinate”, “review”, “evaluate”, and “assist with the development of policies and procedures”. We noted the following instances where unclear scope of work or payment terms caused cost overruns and overpayments.

- At one state agency there were differences in interpretation between two consultants and the agency regarding the extent of services to be provided. In both cases the consultants worked beyond the scope of the original contract and they submitted bills in excess of the waiver maximums. The agency ultimately negotiated payments of $980,000 to settle the cost overruns.

- Unclear deliverable and payment terms caused a state department to overpay a vendor $48,000 for audits never completed. Instead of paying a fixed price for each audit, it paid the vendor a monthly rate regardless of the number of audits completed. The department also paid the same vendor $53,000 for optional work never completed.

- A department overpaid an advertising agency $266,000 because the vendor calculated its commission before applying its discount received on advertising spots. This matter was referred to the Division of Purchase and Property (DPP) which took immediate action to collect the overpayments.
We also noted inconsistencies in how agencies documented progress and achievement of deliverables. In addition, project assessment forms were not remitted to the DPP Contract Compliance Audit Unit at the completion of contracts as required by Treasury Circular Letter 98-14-OMB. This form provides DPP with an evaluation of the vendor’s performance and with some assertion by the agency whether vendors adequately delivered services in accordance with the contract.

**Recommendation**

We recommend the DPP sponsored contract management training program include instruction for contract managers in understanding the scope of work and payment terms, assuring payments match deliverables, monitoring project progress, and evaluating vendor performance.

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**Time Reporting of Hourly Consultants**

We reviewed 15 professional service contracts in which the state paid the vendors by the hour or the day. Since the state did not have a standard policy regarding time reporting for professional service contracts, the form and content of vendor time reporting varied widely. The record keeping of vendors’ time for the contracts we reviewed varied as follows:

- Two agencies kept time records for the vendor and compared it to the vendor bill to ensure accuracy.
- For six contracts, vendors maintained detailed written time records that included the employees’ names and the hours worked per day. No agency records were maintained.
- For six contracts, vendors submitted written invoices including the employees’ names and total hours or days for a billing period. No agency records were maintained.
• One vendor did not submit any written evidence of the employees' names or hours worked during the billing period. No agency records were maintained. Invoices for seven consecutive months were identical for the hourly wage portion of the contract totaling $861,000.

Inadequate timekeeping could cause the state to pay for hours that were not worked by the vendors or to pay for individuals whose time was not included in the contract.

Recommendation

We recommend the Division of Purchase and Property (DPP) develop a policy addressing a minimum standard for written time records for contracts where vendors are paid by the hour or day. The written time records should include employee name and the date and hours worked each day. We also recommend DPP develop a standardized time sheet to be used by vendors whose records do not meet the standard. These records would provide a monitoring tool for the contract manager.
November 19, 2007

Stephen M. Eells  
Assistant State Auditor  
Office of the State Auditor  
Office of Legislative Services  
PO Box 067  
Trenton, NJ 08625-0067

Re: Audit Report of the Department of the Treasury, Division of Purchase and Property, Professional Services Contracts dated October 24, 2007

Dear Mr. Eells:

Thank you very much for the copy of the draft audit report on the referenced topic to be released to the Governor and the Legislature. Treasurer Davis has requested that I respond on her behalf. As Assistant State Treasurer for Procurement, it is appropriate for me to provide the Department’s formal responses to the Audit Report Recommendations.

1. Training of State Contract Managers

We recommend DPP work with the Department of Personnel to develop a project management training program covering the responsibilities of Circular Letter 07-03-DPP or provide agencies with a list of acceptable training programs.

Division of Purchase and Property ("DPP") Response

As you know, DPP was responsible for the legislation that mandated the appointment of State Contract managers and also wrote the Circular explaining its use. Therefore, we believe that this recommendation is reasonable. Notably, prior to the audit, DPP explored the availability of "canned" project management training programs with the Department of Personnel ("DOP") and found no suitable programs. DPP further explored the feasibility of DOP’s developing such a program and found that the cost was prohibitive. Thus, it was (and still is) the DPP’s conclusion that because of budgetary constraints, State agencies will not absorb the cost for additional training for the State Contract Manager function, which is not a core function of State agencies. However, DPP will research and try to provide State agencies with a list of available training programs. We will also ask DPP’s Contract Compliance and
Audit Unit (CCAU) to adapt its existing contract management and contract use training program for agencies to a "train the trainer" approach, requiring agencies who request such training to identify key people to be trained, which would then be responsible for training others within the same agency. CCAU will also require that agencies inform us who is trained so that we could provide supplemental training as needed to just a subset of individuals. At this time, as noted in the Exit Conference, DPP does not have staff available to offer training statewide but will continue its current practice of providing such training upon agency request.

2. Requests for Waivers of Advertising

We recommend DPP revise existing policies which would require agencies to re-bid subsequent professional service contracts where competition was originally sought. We also recommend DPP seek legislation that would provide a consequence for those responsible for allowing a vendor to commence work prior to DPP approval.

DPP Response

Pursuant to N.J.A.C. 17:12-1A.2(f)(1) and (f)(2), the State agency submitting the Waiver of Advertising request is required to obtain competition for professional services. The DPP, with the assistance of the Attorney General's office, which approves all waivers for legal sufficiency, has enforced the competition provision. As noted in the examples provided in the audit report, typically the State agency initially obtained competition for the professional services sought under the waiver. The auditor's report noted that it was in the subsequent waiver for the same services that the State agency contracted with the same vendor without obtaining competition. Upon review of the exceptions noted in the auditor's report, the DPP finds that the using agency was either requesting that the initial vendor be permitted to complete the work, which is similar to an extension of an advertised term contract, or that the agency was seeking to permit the vendor to perform work that was directly related to the work already undertaken in the first contract, similar to a contract amendment under an advertised contract, and thus the agency was seeking to take advantage of the vendor's knowledge and skill obtained from the first contract to reduce costs associated with retaining a new vendor. Furthermore, for some of the waivers under scrutiny, the State agency was under outside pressure to get the needed work done effectively and expeditiously.

While DPP agrees with the second recommendation that there should be legislation to penalize State agencies that authorize work by vendors without obtaining Treasury approval for the work, DPP is hard-pressed to envision what the consequences might be. Currently, when work is authorized prior to approval, DPP writes to the supervisor and commissioner of the approving individual that the individual authorizing the work has violated DPP policy. A copy of the letter is also sent to your office. We think that these measures are sufficient and leave appropriate action on the violation to the agency involved. However, perhaps language in the appropriation act reducing an agency's appropriation for the following year by the amount expended under unauthorized, confirming waivers would have the desired effect. This is something we will take up with OMB.
3. Monitoring of Scope and Deliverables

We recommend the DPP sponsored contract management training program include instruction for contract managers in understanding the scope of work and payment terms, assuring payments match deliverables, monitoring project progress, and evaluating vendor performance.

DPP Response

The DPP presently provides the type of procurement and State contract management training recommended through its Contract Compliance and Audit Unit ("CCAU"). CCAU, as part of its audit process on State agency contract use, provides procurement and contract management training. Indeed, this form of training has been expanded at times to provide training to the procurement staff within whole departments. Given staff shortages, CCAU currently provides such training independent of an audit, upon agency request. As set forth in the response to Recommendation #1 above, DPP will adapt its existing training program to a "train the trainer" approach. Lastly, DPP staff, upon request, have provided State agency staff involved with procurement advice and counsel.

4. Time Reporting of Hourly Consultants

We recommend the Division of Purchase and Property (DPP) develop a policy addressing a minimum standard for written time records for contracts where vendors are paid by the hour or day. The written time records should include employee name and the date and hours worked each day. We also recommend DPP develop a standardized time sheet to be used by vendors whose records do not meet the standard. These records would provide a monitoring tool for the contract 'manager.'

DPP Response

Through the audit process, CCAU has advised and provided direction to State agencies with respect to monitoring contractor staff hours, and keeping accurate records of these hours to prevent over-billing by contractors. In addition, other DPP staff has advised State agencies on maintaining records of contractor staff to ensure accurate billing by contractors.

DPP agrees that basic guidance needs to be provided to agencies in the form of key principles, for example, that agency staff must monitor the hours of work and the work accomplished by contractor hourly labor. However, we believe that a single format would not only not be possible but would not allow for adaptation, based on best industry practice, to specific contract vehicles. Further, a standard format would hamper agency flexibility to use what would optimize the return from such contracts. DPP can adapt and attach to its RFP Professional Services and IT template the State's employee timekeeping form. The language relating to billing currently reads as follows:
5.21 FORM OF COMPENSATION AND PAYMENT

This Section supplements Section 4.5 of the NJ Standard Terms and Conditions version 05 09 06, located on the Advertised Solicitation, Current Bid Opportunities web page http://www.State.nj.us/treasury/purchase/bid/summary/08x39598.shtml. The Contractor must submit official State invoice forms to the Using Agency with supporting documentation evidencing that work for which payment is sought has been satisfactorily completed. Invoices must be submitted in accordance with the requirements of the Scope of Work Section of this RFP. Invoices must also be submitted for any special projects, additional work or other items properly authorized and satisfactorily completed under the contract. Invoices shall be submitted according to the payment schedule agreed upon when the work was authorized and approved. Payment can only be made for work when it has received all required written approvals and has been satisfactorily completed.

For contracts awarded on a time and material or hourly basis, we will add language along the following lines to the template:

The State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor hourly labor and shall document both the work and the approval. Payment shall not be made without such documentation. Attached is a form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed.

We thank you very much for your efforts on behalf of DPP. We are always seeking ways to improve our practices.

Very truly yours,

[Signature]

Debra Bell
Assistant State Treasurer

Attachment
c: Michellene Davis, Acting State Treasurer
   Alice K. Small, Acting Director, DPP
## State of New Jersey Attendance Record

**Name of Employee**
(Please Print)

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<th>SUN</th>
<th>MON</th>
<th>TUE</th>
<th>WED</th>
<th>THU</th>
<th>FRI</th>
<th>SAT</th>
<th>SUN</th>
<th>MON</th>
<th>TUE</th>
<th>WED</th>
<th>THU</th>
<th>FRI</th>
<th>SAT</th>
<th>TOTAL HOURS</th>
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**New Employees and Starting Date**

**Terminations of Employment, Reason and Last Date Worked**

**Notes:**

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**Signature of Contractor Project Manager / Date**

**Signature of State Contract Manager / Date**